

DRAFT
Zoning Board of Adjustment
Meeting Minutes
July 14, 2015

Members: Steve Filipi, Gretchen Wittenborg, Bob Handy, Jack Ernst, Cathy Davis
Others Present: Sue Wood, alternate and Nancy Carney, selectmen's representative
Paul Grasewicz, David Streeter, John LaClair, and friends and neighbors of the applicant
CTO: 7:00 PM.

7:00 PM Public hearing. Hodgkins' application for a Variance to construct a new dwelling and remove existing dwelling on property located at 99 Howeville Road, Map 20, Lot 15, Rural District.

Mr. Grasewicz described the property and plans to remove the existing seasonal cottage, which is situated on piers on the shoreline of Laurel Lake. He noted that water drains from the lake under the cottage into a stream on the property. The Hodgkins plan to construct a new, year around dwelling about 80 feet from the shoreline, and a garage. He said they met with the Conservation Commission and did a site walk of the property with them. The Cons Comm issued a report saying that no construction or work was planned in the wetlands, but that wetlands might be impacted by construction within the 75 foot WPOD buffer where the new house and garage will be located. Grasewicz noted that none of the water on the site will drain into the lake, due to topography between the building site and the lake.

Grasewicz added that the Hodgkins met with the Planning Board for a conditional use permit to construct a new structure in the WPOD buffer, which was issued by the Board, with conditions. The next step was for the applicant to apply for a variance of the restriction on new structures in the WPOD. [See Article IV, Section 127-16.1, D. 6. (e)]. If/when all municipal permits are secured, they will apply for the relevant state permits. Both proposed new structures, the home and the garage, are within the 250 foot shoreline protection buffer as well as the municipal WPOD. The driveway is in neither.

The existing leach field is outside the WPOD 75 foot setback and the new septic system will be larger than the existing tank to accommodate an extra bedroom in the new dwelling and it will be located outside the WPOD, as is the leach field. The Hodgkin's plan to live in the new dwelling full time.

Filipi asked about the remaining property not shown on the plat, since the lot is 4.2 acres. Grasewicz described the remaining property between the road and

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the proposed new dwelling as having some isolated wetlands. The preferred location was chosen so the Hodgkins would have a view of the lake, since the existing leach field mound would obscure the view from further back on the land. Mrs. Hodgkins stated that if the dwelling was constructed closer to the road not only would the lake and mountain view be obscured, but Mr. Hodgkins, who has Parkinson's disease, would not be able to access the lake or enjoy it. She said they will plant vegetation on the site and will be improving the property by removing the cottage from the shoreline.

A second dwelling on the property near the road was removed in 2004.

Filipi asked if the leach field had been tested. Grasewicz said there is no evidence of breakout, adding that the field is not that old.

Grasewicz read their application relative to the criteria for approving a variance.

Filipi asked where the outflow under the existing cottage goes. Grasewicz and Handy both stated it went into the stream on the property, through the culvert under the road, and from there down to Sportsman's Pond and MA. Grasewicz said there is not supposed to be an outflow there, but another dam, which is about 100 feet from this property, on what was formerly the Treat property, is blocked by sand accumulation.

Curt Schmidt, a neighbor, told the Board that 50 years ago the people living on the Treat property brought in a lot of sand for a beach, adding it was before dumping sand on the shoreline or in the water was regulated. The sand migrated about 15 feet blocking a lake outlet, which then diverted the flow under the Hodgkins cottage, creating the wetlands and the outflow stream. He said once the outlet was blocked the water flow created a swampy area and beavers moved in making it worse. He said an illegal action has swamped the Hodgkins property.

Ernst asked who is responsible for maintaining the dams, and Wittenborg said it was determined to be the property owner, according to the file.

Filipi asked if there were other comments from abutters. There were none.

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Wittenborg said that since the Board could not enter the property without permission, she suggested a site walk might be appropriate now if the Hodgkins would permit it. The Board agreed they would like to do a site walk and that they could do it this evening. Filipi continued the hearing to follow the site walk and the Board left at 7:30 PM, accompanied by Grasewicz, the contractors, the Hodgkins and their neighbors and friends.

The Board returned and reconvened the hearing at 8:20 PM.

Grasewicz distributed the plats again and offered to present the house construction plans. The Board declined.

Handy asked how the existing cottage will be removed since it is virtually in the water. Mrs. Hodgkins said they were planning to take it down by hand, salvage some of it and dispose of the rest in a dumpster to be located on the property once the ground is solid enough to bring a dumpster in.

Grasewicz said the piers under the cottage will be left in place so the lakefront will not be disturbed. A state shoreline permit and perhaps a wetlands permit for the removal will be needed. Davis asked if the shoreline will be left natural, without any accessory structures to access the water. Mrs. Hodgkins said that was accurate. Mr. Hodgkins said they are trying to re-naturalize the shoreline.

Filipi asked how oversight of the erosion control measures will be monitored. Grasewicz said there is a natural erosion control between the shoreline and the 250 foot shoreline buffer boundary, created by the natural vegetation, laurel bushes, and a significant duff layer on the forest floor. He said DES does not inspect, but the Town may.

Filipi asked about the right of way on the property. Mrs. Hodgkins said it is an old deeded right of way belonging to them that was used to access a cottage that was removed in 2004. The ROW is cabled off now.

There was some discussion about other properties on the lake but none were similar enough to guide the Board in its deliberations. Grasewicz said that if the existing cottage was fixable they would not be before the Board. It cannot be

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converted for year round use. Wittenborg suggested they were not limited to this one spot, given the lot is 4.2 acres.

Mrs. Hodgkins said that looking at the 6 criteria on which the Board bases their decision, she feels their application meets all the criteria. Wittenborg said the Board has very little leeway and has to work within the confines of the zoning ordinances, adding the Board cannot do what it may want to do because zoning prevails.

Mrs. Hodgkins said she feels that substantial justice would be done, because it is reasonable to have a full time house that that is setback from the lake. Wittenborg noted that a variance runs with the land and the Board is not allowed to take personal needs into account.

Mr. LaClair, contractor, noted that if the variance is approved a condition could be placed on the approval requiring Mr. Grasewicz to inspect all erosion control measures and submit written reports to the Town. Carney said the Selectmen or the Code Enforcement officer could inspect at intervals as a condition of approval. Wittenborg said that was a good idea. She added that generally the Board's ability to grant a variance relies on the possibilities of alternatives, or the lack thereof.

Filipi noted that this situation is unique in that there is a large structure sitting on top of a stream that needs to be dealt with now. He wondered what the process would be to replace the pilings with the water flowing under the house. He said construction is the dangerous part for wetlands, adding that he believes there may be hazardous materials, including asbestos, in/on the cottage.

Filipi wants inspections and storm monitoring of erosion controls with periodic written reports.

Mr. LaClair noted that foundation drains, roof gutters, and downspouts will be installed to capture roof runoff, as requested by the Conservation Commission. The runoff will be directed into dry wells. Grasewicz said these requirements are in the Notes on the plat.

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Asked if there will be two dwellings on the property for a period of time, Carney said the Selectmen could issue a building permit for the new dwelling and then withhold the occupancy permit until the second dwelling (the existing cottage) is removed. Filipi said the new structure will have no effect on the lake, unlike the existing cottage.

Ernst said the proposed plans don't adversely affect wetlands if normal precautions are taken, and erosion controls are in place during construction and removed when construction is completed.

Filipi said that if there was no stream and it was only the wetlands, there would be no problem. Handy said that with all the rain we are having this year, inspection should probably occur weekly. Grasewicz said that there would be an inspection following any weather event with ½ inch of rain.

Mrs. Hodgkins said that the improvements will help the wetlands to function better, removing the cottage will remove some impervious surface and it will have no further impact on wetlands. Handy wondered if the stream flow might be altered when the cottage is removed. Grasewicz said the water flows under a very large boulder now and it won't be moved. Filipi added that if the flow is determined by a granite boulder, blasting would be the only way to change the flow.

Ernst said that removing the existing cottage will increase the permeable surface, replacing the impermeable one that directed roof runoff towards the stream or lake.

Ernst moved, Davis seconded and the board voted to close the public hearing so the Board could deliberate. The Board read Section 127-16.1 A.-3 regarding the purpose of the WPOD. They also reviewed Section 127-16.1 D. 5, the requirements for granting a special exception.

Filipi said the Board was considering two things – the lake and the wetlands. He reiterated that the proposed two new structures, dwelling and garage, will be fitted with roof gutters and gutters, and foundation drains, directing runoff to dry wells per the recommendations of the Conservation Commission report, both of which have been added to the Notes section on the plat.

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Ernst said removing the cottage would remove the potential for pollution from the existing old sewer line. Filipi posed the question of the potential for the existing cottage to remain in place if the property was sold without the new construction. He also noted that many towns do not have a buffer around their wetlands, particularly a 75 foot buffer, however, the Board needs to consider all impacts.

Referring to the mandatory findings for granting a variance, Filipi led the Board through consideration of each criteria.

Mandatory Findings. Before granting any Variance from the provisions of this Chapter, the Board of Adjustment shall make specific findings that all of the following conditions are present: (Amended ATM 3-24-2006, Art. 14; ATM 03-09-10, Art. 10)

1. All Variances:

- a) *The variance will not be contrary to the public interest;* Board agreed unanimously; Davis saying there are no close abutters, Ernst saying there are no negative environmental impacts, Filipi saying the public stands to benefit.

The Board discussed conditions, deciding to add the following, regarding erosion control, inspection and monitoring. The site will be inspected by Grasewicz prior to the beginning of construction, after any rainfall of ½ inch, and periodically throughout construction. A final inspection will occur after construction is completed but before erosion controls are removed and stabilization has been finalized. Grasewicz will contact contractors if a situation arises regarding erosion control requiring repair/maintenance of erosion controls. Grasewicz will issue written reports to the Board of Selectmen after each inspection. Additionally, the existing cottage must be removed within one year of issuance of a building permit for the new construction. Filipi moved, Wittenborg seconded and the Board voted unanimously to add the conditions as stated.

The contractors estimated a four month timeframe once permits are secured for construction of new dwelling. There was discussion about allowing two dwellings on site. The Hodgkins intend to use the existing cottage until the new house is constructed. They will use a porta potty in the interim. (The contractors will have a porta potty on site.) Grasewicz said the existing pump tank will be removed from the site and pipes disconnected, severed and left in place so the forest floor covering them will not be disturbed.

Carney stated that a certificate of occupancy for the new house will not be issued until the existing cottage is removed from the property. She added that building

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permits are issued for one year, and can be extended if necessary. Likewise a demo permit.

(b) The spirit of the ordinance is observed; The Board agreed that there is potential for substantial improvement over the existing situation and that the project will not impact wetlands given the erosion controls in place.

(c) Substantial justice is done; The Board agreed unanimously that the project will be an enhance use of the property.

(d) The values of surrounding properties are not diminished; The Board agreed unanimously that the surrounding property values will not be diminished by the proposed project.

(e) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Filipi said he felt that if the existing cottage is not removed, it will remain on site in the future, since it has not been condemned and may still be useable. This is a way to improve conditions on the site now. Wittenborg said that literal enforcement of the ordinance would prohibit the proposed improvement to this property.

Handy moved, Ernst seconded and the Board voted unanimously to grant the Variance and further agreed that the proposed use is a reasonable use of the land.

The Board asked that the conditions of approval become part of the Notes on the plat.

Ernst moved, Handy seconded and the Board approved the 06/09/15 minutes as written.

Ernst moved, Wittenborg seconded and the Board voted to adjourn the meeting at 9:30 PM.